



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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-----, ----- ) ISCR Case No. 09-01585  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 17, 2010

**Decision**

WHITE, David M., Administrative Judge:

Applicant owes about \$55,000 in total delinquent Federal income taxes that he failed to pay each year from 2003 to 2008. He recently resolved two other delinquent accounts. He recently resumed participation in Gamblers Anonymous to address his gambling addiction, but has not yet established a track record of financial responsibility or solvency. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his security clearance application on October 30, 2007. On July 24, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense (DoD) for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on August 3, 2009. He answered the SOR in writing (AR) on August 10, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 17, 2009, and DOHA assigned the case to me on September 24, 2009.

DOHA issued a Notice of Hearing on October 1, 2009, and I convened the hearing as scheduled on October 28, 2009. Department Counsel offered Government Exhibits (GE) 1 through 10, which were admitted without objection. Applicant testified on his own behalf, and offered Applicant Exhibit (AE) A, which was also admitted without objection. I granted Applicant's request to leave the record open until November 15, 2009, for submission of additional evidence. Applicant timely submitted documentation that he resolved two debts (AE B), an Internal Revenue Service (IRS) Installment Agreement (AE C), and his annual performance evaluations for the last five years (AE D), which were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 5, 2009.

### **Findings of Fact**

Applicant is a 53-year-old subcontract manager, who has been employed by a defense contractor for about 35 years. He served a three-year enlistment in the Marine Corps, and was honorably discharged in 1978. He has held a security clearance since 1984. He has been divorced since 1995, and has three adult children. (AR at 3; GE 4 at 6, 11-14, 17-18, 21, 27-28; Tr. at 8-9, 36-40.) In his answer to the SOR, Applicant admitted the truth of all factual allegations set forth in ¶¶ 1.a through 1.g, with explanations. (AR at 1-5.) Those admissions are incorporated into the following findings of fact.

Applicant began gambling in 1996 after his divorce and a break-up with a subsequent girlfriend. The first year he lost around \$16,000. He was unable to pay all of his bills, and tried unsuccessfully to sell his house. In March 1997 he filed for Chapter 7 bankruptcy relief, listing four unsecured creditor accounts totaling \$42,650. Two of these debts, totaling \$28,000 were exempted from discharge, and Applicant made regular monthly payments to those creditors after his July 1997 discharge until they were satisfied. (GE 1; GE 3; Tr. at 42-44, 79-80.)

Applicant attended about eight months of professional counseling for his depression and gambling problem in 1997. He also attended Gamblers Anonymous (GA) for the first time that year. In February 1998, he told a Defense Investigative Service agent:

I don't think I have any problems with gambling now. I may go to a casino once or twice a month to play blackjack, but I set a limit now. I know it probably isn't the right thing to do, but since I set a limit of \$50 & stick with it, I don't think it will cause me any problems.

(GE 3 at 3.) Applicant's gambling problems continued, however. He attended GA meetings for about ten months during 2001-2002, for about six months in 2003, for about ten months in 2004 (along with another six months of mental health counseling as alleged in SOR ¶ 1.g), for about four months in 2007, and for about two months in 2008. According to Applicant:

There were times after I exited the program during those years I would abstain from gambling. But, that didn't last very long. So, the times that I was not gambling is when I was in the program.

(Tr. at 44-45.) He was interviewed in January 2008 by an investigator from the Office of Personnel Management (OPM), and estimated that he spent from \$400 to \$500 per gambling outing, totaling about \$25,000 annually. He also told the investigator that he realized he had a gambling problem when not attending GA meetings, and that he was again attending them. (GE 7 at 6.)

Applicant last gambled in January 2009. Late in that month, he began a series of hospitalizations for surgeries, heart attacks, and other medical complications. He was in the hospital from late January to March, in June, and again in September 2009. In April 2009, he resumed attendance and participation in several different GA meeting groups. People with whom he has attended GA since 2001 or 2002 testified that his recent participation is far more committed, enthusiastic, and sincere than it had been during earlier periods of attendance. His stated intention is to continue abstinence from gambling and active participation in GA to help him prevent another relapse. (AE A at 5; Tr. at 29-33, 57-74.) His mother, with whom he now resides, also testified to his transformation since January 2009, his rededication to family relationships without interference from gambling, and his lifelong patriotism. (Tr. at 74-79.)

Applicant failed to pay a substantial portion of his Federal income taxes each year from 2001 through 2008. He has not yet filed or calculated his 2009 income tax obligation, but hopes that his recently renewed contributions into his 401(k) savings account will reduce the amount he owes by enough to be covered by his withholdings, unlike the previous years. His Federal income tax delinquencies total approximately \$55,000 for tax years 2003 through 2008. Two tax liens were filed against him for portions of this total as alleged in SOR ¶¶ 1.b and 1.e. He has negotiated several different agreements with the IRS to pay his delinquent taxes, and has satisfied the delinquencies for 2001 and 2002. In November 2007, his agreement called for \$1,500 monthly payments. By April of 2009, that amount had changed to \$1,024 per month. In October 2009, Applicant began paying \$1,100 per month under another revised installment agreement, with the intent to have all back taxes paid within five years. (AR at 4, 5; GE 7 at 6, 14; AE C; Tr. at 50-54, 80-83, 86.)

Applicant's annual income is about \$101,000. Since he now lives with his parents, he has reduced his living expenses to the point that he has more than \$2,000 per month in surplus income after paying his IRS installment agreement and remaining non-delinquent debt payments. Since January 2009, he has used that surplus to reduce

his outstanding debt from 25 creditors to 8, including the IRS. He satisfied the two non-IRS delinquent debts alleged in SOR ¶¶ 1.c and 1.d, by making final payments toward both in early October 2009. His total debt to the seven non-IRS creditors was \$21,220 as of October 16, 2009, and he was current on the scheduled monthly payments for each of them. He was also able to increase the value of his 401(k) savings account from \$31,574 to \$46,662 between April and October 2009. (GE 8; GE 10; AE A; AE B; Tr. at 47-49, 54-57, 83-86.)

Applicant's performance evaluations for 2004 through 2008 reflect that he generally exceeded expectations and performed his responsible duties in an efficient and effective manner. (AE D.) His testimony and demeanor during the hearing reflected candor and sincerity in his desire and intent to avoid future financial problems, and especially not to resume gambling.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider and apply the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2, describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and (c), the entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded in mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline F, Financial Considerations**

AG ¶ 18 expresses the security concern pertaining to financial considerations:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Department Counsel requested analysis of the applicability of four of these potentially disqualifying conditions:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations; and
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern.

(Tr. at 18.) Applicant began gambling to an extent that he could not meet his other financial obligations in 1996. Even with six different periods of abstinence during GA participation between 1997 and 2008, this problem continued into January 2009. During those years, he was regularly unable or unwilling to satisfy numerous debts, specifically

including his Federal income tax liabilities starting in 2001. Since undergoing a series of serious medical problems in 2009, he stopped gambling and has resolved a number of delinquent debts. However, about \$55,000 in Federal tax delinquencies remain, which will take five years to repay under current arrangements. Applicant's present financial inability to pay these substantial remaining delinquencies supports ongoing security concerns under AG ¶ 19(a). He is under continuing financial duress, so he remains at risk of having to engage in illegal acts to generate funds. The evidence further established a lengthy and ongoing history of not meeting significant financial obligations as a result of his addictive gambling problems, raising security concerns under AG ¶¶ 19(c) and (f). This history raises concerns about poor self-control, lack of judgment, and unwillingness to abide by rules and regulations, thereby raising questions about his reliability, trustworthiness, and ability to protect classified information. AG ¶ 19(b) was not established in this case. Although Applicant admits irresponsible spending over the period from 1996 to 2008 that resulted in multiple delinquent debts, his resolution of many of these debts between April and October 2009, and his recent arrangement regarding the remaining IRS debt, provide some evidence of willingness and intent to pay his debts.

AG ¶ 20 provides conditions that could mitigate security concerns arising from the foregoing financial considerations. Potentially applicable mitigating conditions are:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) was not established because Applicant's delinquencies arose over the last fourteen years, and the substantial Federal tax debts continue at present. His multiple relapses into gambling after previous attempts at abstinence with the

assistance of mental health counselors and the GA program also preclude application of this mitigating condition without a longer period of successful reform. Applicant's 1995 divorce partially contributed to the debt problems underlying his 1997 bankruptcy, but his gambling was the primary cause. He lost \$16,000 gambling during the year preceding the court's discharge of about \$14,000 in unsecured debt. He also had significant medical problems in 2009, but those issues had no causal relationship to any SOR-alleged financial concerns. Accordingly, mitigation under AG ¶ 20(b) was not established. Applicant resumed participation in the GA program during the six months preceding his hearing, and several fellow GA members observed that he seems more dedicated and sincere now than he was during his six previous unsuccessful attempts. This is a very good start, but given his history of relapse, it is too soon to reach a finding that there are clear indications that the problem is under control. Applicant repaid two smaller delinquencies alleged in SOR ¶¶ 1.c and 1.d immediately before his hearing. However, he pays only \$1,100 per month toward his large Federal tax debt, despite a monthly surplus income of more than \$2,000. Thus, meaningful mitigation is not yet established under AG ¶¶ 20(c) or (d). Applicant did not dispute any of his delinquencies under AG ¶ 20(e), and in fact admitted that they were valid debts.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the pertinent facts and circumstances surrounding this case. Applicant's conduct of security concern was fourteen years of failure to meet financial obligations, including significant Federal tax debt resulting from years of excessive gambling. He resolved a number of debts during 2009, while again participating in GA and abstaining from gambling. Unfortunately, each of six previous attempts to control his gambling addiction through GA participation ended in relapses and further financial irresponsibility. Two courses of counseling by mental health providers similarly failed. His pattern of not

paying his Federal tax obligations for many successive years, together with the absence of any meaningful effort to avoid recurrence of the problem for 2009, raise particular concerns about his commitment to fulfilling his Federal duties and obligations. His actions during 2009 demonstrate a good start toward controlling gambling and paying creditors, but are not yet of sufficient duration to eliminate these security concerns. Applicant has not yet established a good-faith track record of financial responsibility or permanent behavioral changes. The record demonstrates his unwillingness to more promptly address his delinquent Federal debt despite substantial surplus income. Applicant's ongoing indebtedness generates continuing potential for pressure, coercion, or duress. His 1997 bankruptcy was so far in the past that, in itself, it would not support security concerns. However, it represents the beginning of a long and continuing pattern of financial irresponsibility relating to problem gambling and supports continuing concerns about Applicant's trustworthiness and reliability. Insufficient time has passed to demonstrate that his gambling-related financial problems are unlikely to recur or worsen.

Applicant did not mitigate security concerns arising from his history of failing to meet financial obligations, and his inability to pay his gambling-related delinquent debts. The record generates significant doubt as to his present eligibility and suitability for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge